

PAT HAYES,	:	Order Affirming Decisions
Appellant	:	
	:	
v.	:	Docket Nos. IBIA 94-3A
	:	IBIA 94-11-A
ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 31, 1994

These are appeals from two decisions of the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning requests for financial assistance. Similar appeals from this appellant were addressed in Hayes v. Acting Anadarko Area Director (Hayes I), 22 IBIA 65, recon. denied, 22 IBIA 175 (1992), and Hayes v. Anadarko Area Director (Hayes II), 25 IBIA 50 (1993). 1/

#### IBIA 94-3-A

The appeal in Docket No. IBIA 94-3-A concerns appellant's March 31, 1993, application for general assistance benefits for the month of April 1993. Appellant's application was approved on April 22, 1993, in the amount of \$210. Appellant was dissatisfied with the approval decision and requested a hearing under 25 CFR 20.30. A hearing was held on June 3, 1993, at the Anadarko Agency, BIA. On June 17, 1993, the Hearing Official issued a decision concluding that appellant's application had been processed correctly and the amount of his payment calculated correctly. She informed appellant that he could appeal her decision to the Area Director. Appellant did so. He contended that the Hearing Official's decision was untimely under 25 CFR 20.30(f), which requires that a decision be rendered within 10 days of the hearing. He also (1) contended that the April 22, 1993, approval of his application was untimely under 25 CFR 20.13; (2) challenged the calculation of his payment; (3) objected to the requirement that his non-Indian wife submit job search reports; (4) alleged that he was entitled to a hearing for the purpose of objecting to an agreement he had signed; and (5) made various other allegations of procedural irregularities.

---

1/ Hayes I addressed appellant's appeals in Docket Nos. IBIA 92-8-A, 92-35-A, 92-100-A, and 92-111-A. Hayes II addressed appellant's appeals in Docket Nos. IBIA 93-62-A, 93-63-A, 93-78-A, 93-79-A, 93-84-A, 93-102-A, 93-112-A, 93-113-A, 93-114-A, and 93-121-A.

On August 13, 1993, the Area Director affirmed the Hearing Official's decision. He acknowledged that the Hearing Official had exceeded the 10-day limit in 25 CFR 20.30(f) but concluded that appellant had not been harmed. He affirmed the Hearing Official's decision on the merits. Appellant then appealed to the Board, making essentially the same arguments he made before the Area Director.

Several of the issues appellant raises in this appeal were raised in Hayes I and/or Hayes II. Those issues have already been addressed by the Board and will not be addressed again here.

Appellant repeats his objection to the fact that the Hearing Official exceeded the 10-day limit in 25 CFR 20.30(f). The Board agrees with the Area Director that, in the context of this appeal, the short delay was harmless.

Appellant's contention that the approval of his application was untimely under 25 CFR 20.13 was based on the same arguments addressed by the Board in Docket No. IBIA 93-63-A. See Hayes II, 25 IBIA at 53-54. Appellant's contention here is rejected for the reasons given in Hayes II.

Appellant's objection to the calculation of his payment and his objection to the requirement that his wife submit job search reports are the same objections he raised in Docket No. IBIA 93-113-A. In that case, the Board affirmed the Area Director's decision but modified it to delete the requirement that appellant's wife submit job search reports. The Board will also modify the Area Director's decision here to delete the job search requirements for appellant's wife. See Hayes II, 25 IBIA at 57-60, for discussion of these issues.

Appellant contends that he should have been granted a hearing for the purpose of challenging a statement he signed on March 31, 1993, to evidence an agreement he had made with BIA. The statement reads:

I, Pat Hayes have agreed to pay back overpayment of \$454.00 to the Bureau of Indian Affairs by deducting \$20.00 from my General Assistance grant. This will also apply to further general assistance payments received until I start receiving Social Security payments.

I reserve the right to pay more on the overpayment if I can in the future.

Appellant's signature on this statement was witnessed and notarized. Appellant also wrote at the bottom of his March 31, 1993, application for general assistance benefits: "PLEASE WITHHOLD \$20.00 FOR OVERPAYMENT. GEN. ASSISTANCE GRANT FOR APRIL, 1993." The request appears immediately before his signature.

25 CFR 20.30 sets out the conditions under which an applicant for BIA financial assistance is entitled to a hearing. Subsection 20.30(a) provides: "Any applicant or recipient of financial assistance under this

part who is dissatisfied with any decision or action concerning eligibility for or receipt of financial assistance may request a bearing before the Superintendent or his designated representative.” This provision clearly contemplates that the matters for which hearings are available are those BIA decisions or actions to which the applicant had not agreed. The Board finds that BIA was not required to furnish appellant with a hearing concerning a matter, i.e., repayment of overpaid amounts, to which he had agreed.

Appellant's remaining arguments in Docket No. MIA 94-3-A have been considered and rejected.

The Board affirms the Area Director's August 13, 1993, decision as modified by deletion of the requirement that appellant's wife submit job search reports.

#### IBIA 94-11-A

The appeal in Docket No. IBIA 94-11-A concerns appellant's entitlement to general assistance benefits for May 1993.

Appellant turned 62 in April 1993 and became eligible for Social Security benefits. BIA's notice to appellant informing him of his April 1993 benefits also advised him: "In order for you to receive assistance for May, 1993, you will need to provide written verification of the status of your application for Social Security." In a May 7, 1993, letter to appellant, the Superintendent, Anadarko Agency, stated:

You were not required to complete another general assistance application for May 1993 because 25 CFR 20.21[c](1)(i) states that Indians eligible to receive AFDC or SSI will be allowed to receive BIA general assistance once they have applied for and until they begin to receive a assistance payments from AFDC or SSI. Your general assistance will be continued until a decision is made on your application for Social Security providing that you meet all other eligibility requirements.

In order for your May 1993 continued eligibility for general assistance to be determined you will need to sign the enclosed consent for release of information [by] the Social Security Administration. This form is needed to determine the status of your application for Social Security because the verifying document that you submitted appears to have been altered, does not contain a date, has no signature of official verifying information, and does not clearly state the status of your application for Social Security benefits. You will need to return this signed consent form in the enclosed self-addressed stamped envelope by May 27, 1993. If you fail to return the signed form your case will be closed effective May 31, 1993.

(Superintendent's May 7, 1993, Letter).

Appellant appealed this letter and a May 27, 1993, letter from the Acting Superintendent, also concerning appellant's eligibility for May 1993 general assistance benefits. Both appeals eventually reached the Board,

were docketed as IBIA 93-112-A and 93-121-A, but were dismissed as premature. Hayes II, 25 IBIA at 57.

On June 1, 1993, the Agency Social Services representative notified appellant that his case had been closed because he had failed to submit the required document by May 27, 1993.

Appellant requested a hearing. In a letter dated July 1, 1993, the Superintendent stated that he could not convene a hearing because appellant's two earlier appeals concerning the same matter were then pending before the Board. 2/ However, he discussed some of appellant's contentions, stating that his responses were informational only. He stated in part:

Your general assistance could have been continued for May 1993 had you cooperated and verified that you had not received a Social Security Check in May 1993; however you chose not to provide clear and uncensored documentation to determine your eligibility. The only verification of the status of Social Security benefits that you made available to [the] caseworker were tampered with and also indicated that as of May 04, 1993 you were in "current status" and "currently receiving" benefits; and possibly received social security benefits for May 1993. The continuance of assistance for May 1993, without concise verification of the status of your application for Social Security and date benefits were to be received, another general assistance overpayment and possible fraud may have resulted.

(Superintendent's July 1, 1993, Letter at 2).

Appellant appealed this letter to the Area Director, who stated in a letter dated August 27, 1993, that, although he believed appellant had already received responses to his arguments, no formal action could be taken in the appeal because appellants' earlier appeals on the same matter were then pending before the Board. Appellant appealed the Area Director's letter to the Board.

This appeal is another example of a problem discussed in Hayes II, 25 IBIA at 61. Neither the Superintendent nor the Area Director was able to issue a decision on the merits of appellant's appeal, because of the procedural snarl caused by appellant's premature and repetitious appeals. Under other circumstances, the Board would remand a case in this posture for a decision on the merits.

In this case, however, it is apparent from both the Superintendent's July 1, 1993, letter and the Area Director's August 27, 1993, letter that both officials would have denied appellant's appeal on the merits. The Board concludes that no purpose would be served by further delaying resolution of this matter.

---

2/ Under the Board's decisions, BIA loses jurisdiction over a matter once an appeal has been filed with the Board. E.g., United Auburn Indian Community v. Sacramento Area Director, 24 IBIA 33, 38-39 (1993).

Arguably, appellant was entitled to a hearing under 25 CFR 20.30 concerning the denial of benefits for May 1993. It is apparent, however, that the denial resulted from appellant's failure to submit information required by BIA. 25 CFR 20.21(c)(ii) provides: "The Bureau will not make payments for any month for which AFDC or SSI payments are made." In implementing this provision, BIA may require an applicant in appellant's position to submit information concerning his Social Security status. The Board concludes that an applicant for financial assistance is not entitled to a hearing under 25 CFR 20.30 if he is denied assistance because of his own failure to submit information reasonably required by BIA.

Appellant does not contend that he submitted the required information. Although he makes several of the arguments he has made many times in the past, the Board continues to find them unpersuasive.

Construing the Area Director's August 27, 1993, letter as a decision on the merits, and one which denied general assistance benefits to appellant for May 1993, the Board affirms that decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's August 13, 1993, decision is affirmed as modified by deletion of the requirement that appellant's wife submit job search reports, and the Area Director's August 27, 1993, decision is affirmed. 3/

---

Anita Vogt  
Administrative Judge

---

Kathryn A. Lynn  
Chief Administrative Judge

---

3/ Appellant sought damages in both appeals. Even if the Board had authority to award damages, it would not do so here.